

**WAUKESHA COUNTY BOARD OF ADJUSTMENT
SUMMARY OF MEETING
FEBRUARY 23, 2005**

The following is a Summary of the Board of Adjustment Meeting held on Wednesday, February 23, 2005, at 6:30 p.m. in Room 255/259 of the Waukesha County Administration Center, 1320 Pewaukee Road, Waukesha County Wisconsin, 53188.

BOARD MEMBERS PRESENT: James Ward, Chairman
Robert Bartholomew
Paul Schultz
Walter Tarmann
Ray Dwyer

BOARD MEMBERS ABSENT: Walter Schmidt

SECRETARY TO THE BOARD: Peggy S. Pelikan

OTHERS PRESENT: Drake Reid, BA05:005, neighbor & Town Supervisor
Kelly & Sharon Moran, BA05:005, petitioners
Mark & Laurene Gramz, BA05:006, petitioners
Daniel Betla, BA05:006, petitioner
John & Rikki Cherba, BA05:009, petitioners
Michael Poston, BA05:008, petitioner
Steve Wosinski, BA05:008, neighbor

The following is a record of the motions and decisions made by the Board of Adjustment. Detailed minutes of these proceedings are not produced, however, a taped record of the meeting is kept on file in the office of the Waukesha County Department of Parks and Land Use, and a taped copy or transcript is available, at cost, upon request.

SUMMARIES OF PREVIOUS MEETINGS:

Mr. Tarmann *I make a motion to approve the Summary of the Meeting of February 9, 2005.*

The motion was seconded by Mr. Bartholomew and carried unanimously.

NEW BUSINESS:

BA05:005 KELLY AND SHARON MORAN

Mr. Bartholomew *I make a motion to adopt the staff's recommendation, for the reasons as stated in the Staff Report and with the conditions stated in the Staff Report with the addition of the following condition:*

7. The second floor of the existing barn and new addition shall be used for storage only and shall not be used for living space.

The motion was seconded by Mr. Dwyer and carried unanimously.

The staff's recommendation was for approval, with the following conditions:

1. Prior to the issuance of a zoning permit, the Environmental Health Division must certify that the existing septic system is adequate for the proposed construction, or a sanitary permit for a new waste disposal system must be issued and a copy furnished to the Planning and Zoning Division staff.
2. The proposed addition to the barn shall be located no closer to the lot lines than the existing barn as measured to the outer edges of the walls, provided the overhangs do not exceed two (2) ft. in width. If the overhangs exceed two (2) ft. in width, the building must be located so that the outer edges of the overhangs conform with the offset requirements.
3. Prior to the issuance of a zoning permit, a stake-out survey showing the location of the proposed addition in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
4. Prior to the issuance of a zoning permit, a complete set of plans, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
5. A detailed cost estimate must be submitted to the Planning and Zoning Division staff, prior to the issuance of a zoning permit.
6. If any changes to the existing grade are proposed, a detailed grading and drainage plan, showing existing and proposed grades and any proposed retaining walls, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a zoning permit. This is to ensure the construction of the proposed addition does not result in adverse drainage onto adjacent properties. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property, and not to the neighboring properties or the road. The following information must also be submitted along with the grading and drainage plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The approval of the request for special exceptions from the offset and accessory building floor area ratio requirements and a variance from the remodeling a non-conforming structure in excess of 50% of its fair market value, with the recommended conditions, will permit the construction of an addition to the existing barn. The proposed addition will be no closer to the lot lines than the existing barn. The barn is a historical structure and therefore it is reasonable to grant a variance from the remodeling a non-conforming structure in excess of 50% of its fair market value to prolong its life and is intended to be architecturally compatible with the existing buildings. The approval of this request, as recommended, is not contrary to the public interest. Therefore, the approval of this request, with the recommended conditions, is in conformance

with the purpose and intent of the Ordinance.

BA05:006 MARK GRAMZ (E. Miller and Associates – Petitioner)

Mr. Schultz

I make a motion to adopt the staff's recommendation, with the conditions stated in the Staff Report and for the reasons stated in the Staff Report.

The motion was seconded by Mr. Dwyer and carried unanimously.

The staff's recommendation was for approval, with the following conditions:

1. The addition shall be located no closer to the side lot line than the existing residence as measured to the outer edges of the walls, provided the overhangs do not exceed two (2) ft. in width. If the overhangs exceed two (2) ft. in width, the building must be located so that the outer edges of the overhangs conform with the offset requirements.
2. Prior to the issuance of a zoning permit, the Environmental Health Division must certify that the existing septic system is adequate for the proposed construction, or a sanitary permit for a new waste disposal system must be issued and a copy furnished to the Planning and Zoning Division staff.
3. Prior to the issuance of a zoning permit, a stake-out survey showing the location of the proposed addition in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The approval of the request of a special exception from the offset requirements, with the recommended conditions, will permit the construction of an addition to the existing residence. It should be noted that a special exception differs from a variance in that a special exception does not necessarily require the demonstration of an unnecessary hardship. However, when granting special exceptions, the Board must still consider whether the proposed special exception would be hazardous, harmful, noxious, offensive or a nuisance to the surrounding neighborhood by reason of physical, social or economic effects, and the Board may impose such restrictions or conditions they deem necessary for the protection of adjacent properties and the public interest and welfare. The proposed addition will be no closer to the side lot line than the existing residence and will conform to all other requirements of the Ordinance. The approval of this request, as recommended, is not contrary to the public interest. Therefore, the approval of this request, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

BA05:007 WAYNE AND JULIE HOLTAN

Mr. Tarmann

I move to hold this hearing in abeyance until March 9, 2005, in order to obtain a legal opinion from the Waukesha County Corporation

Counsel as to whether or not an attached garage would be considered a structure used for residential purposes according to Section 3.09 (2)(A)(3) of the Waukesha County Zoning Code.

The motion was seconded by Mr. Bartholomew and carried unanimously.

The staff's recommendation was for approval, with the following condition:

1. A firewall sufficient to meet the one-hour fire rating contained in the Building Code shall be placed on the side of the storage building facing the attached garage and on the side of the attached garage facing the storage building.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The approval of this request, with the recommended condition, will allow the existing storage building to remain on the property. The extreme topography is a limiting factor on the property, which does not allow much flat area for the construction of structures. If the petitioner were required to move the storage building to meet the offset requirement, it would most likely require the removal of several large trees. Finally, the approval of this request, as recommended, is not contrary to the public interest and is in conformance with the purpose and intent of the Ordinance.

BA05:008 MICHAEL POSTON

Mr. Tarmann

I make a motion to adopt the staff's recommendation, for the reasons as stated in the staff report with the conditions stated in the Staff Report with the following changes:

Condition #2 shall read: The fence must be a minimum of 6 ft. in height running along the length of the parking area on the west side of the property and then may be reduced to 4 ft. in height from the parking area to the lake, or as far as it legally can extend.

Condition #4 shall be removed.

The motion was seconded by Mr. Schultz and carried unanimously.

The staff's recommendation was for approval, with the following conditions:

1. The petitioner must install a fence along the west lot line, similar to that of the fence along the east lot line, to screen the parking from the neighboring properties.
2. The fence must be a minimum of 4 ft. in height and shall run along the west side of the property between the parking spaces and the adjacent property.
3. If the petitioner would like to construct the aforementioned fence on the adjacent property to the west, written consent from the adjacent property owner shall be submitted to the Planning and

Zoning Division staff prior to March 15, 2005. If such written consent is not acquired, the fence must be constructed on the subject property. The necessary documentation must be submitted to the Town of Delafield for approval of the fence prior to April 1, 2005. The fence must be constructed by May 1, 2005.

4. A vegetative buffer must be installed along the west lot line between the parking and the lake. A complete vegetation plan must be submitted to the Planning and Zoning Division staff for review and approval by April 1, 2005, and the vegetative buffer shall be installed by May 1, 2005.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The approval of the request for variances from the offstreet parking requirements of the Ordinance will allow the existing parking to remain on the property and will allow the petitioner reasonable use of the property. The property has been used as a restaurant/tavern for many years and the property is only approximately 100 ft. wide, which limits the areas on the property that can be used for parking. The installation of a 4 ft. fence along the west lot line, similar to the fence along the east lot line will serve to shield the parking from the neighboring properties. Therefore, the approval of this request, as conditioned, is within the purpose and intent of the Ordinance.

BA05:009 JOHN AND RIKKI CHERBA

Mr. Schultz

I make a motion to adopt the staff's recommendation, for the reasons as stated in the Staff Report with the conditions stated in the Staff Report with the following changes:

Condition #1 shall be modified to read: The first floor of the structure shall be placed two feet above the floodplain elevation (870 ft. above mean sea level). If the plans submitted show that the lowest level of the structure is a basement then the basement need only be at or above the floodplain elevation. The fill shall not be less than one (1) foot below the flood protection elevation for the particular area and the fill shall extend at such elevation, at least fifteen (15) feet beyond the limits of the structure. Where such distance cannot be achieved because of lot lines or other similar constraints, said fill elevation shall extend as far as is practical, resulting in no slope conditions at its terminus which may adversely affect surface water drainage on adjacent properties.

The motion was seconded by Mr. Bartholomew and carried unanimously.

The staff's recommendation was for approval, with the following conditions:

1. The first floor including any basement of the structure shall be placed two feet above the floodplain elevation (870 ft. above mean sea level). The fill shall not be less than one (1) foot below the flood protection elevation for the particular area and the fill shall extend at such

elevation, at least fifteen (15) feet beyond the limits of the structure. Where such distance cannot be achieved because of lot lines or other similar constraints, said fill elevation shall extend as far as is practical, resulting in no slope conditions at its terminus which may adversely affect surface water drainage on adjacent properties.

2. The residence and any appurtenances must be a minimum of 15 ft. from the 100-year floodplain, and 14 ft. from the south lot line as measured to the outer edges of the walls, provided the overhangs do not exceed two (2) ft. in width. If the overhangs exceed two (2) ft. in width, the building must be located so that the outer edges of the overhangs conform with the offset/setback requirements.
3. Prior to the issuance of a zoning permit, a stakeout survey showing the location of the residence and any appurtenances in compliance with the aforementioned conditions shall be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
4. Prior to the issuance of a zoning permit, a complete set of house plans, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
5. In order to ensure the construction of a new residence does not result in adverse drainage onto adjacent properties, a detailed grading and drainage plan, showing existing and proposed grades, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a zoning permit. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property, and not to the neighboring properties or the road. The following information must also be submitted along with the grading and drainage plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage.
6. Upon completion of the foundation of the residence and attached garage, certification shall be obtained from a registered land surveyor that the floor elevations are in conformance with the above conditions. A copy of that certification must be submitted to the Town of Summit Building Inspector and the Planning Division staff for review and approval.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The approval of this request, with the recommended conditions, will permit the construction of a new residence outside of the 100-year floodplain. The location of the floodplain is a limitation on the property; however, the location of the proposed residence, as conditioned, will maximize the setback from the floodplain while allowing the petitioner reasonable use of the property. It would be impossible to maintain a 75 ft. setback from the floodplain and construct a residence on the property. The location of the well and the septic system are also limitations on the property. The proposed offset of 14 ft. from the south lot line would meet the offset requirements if the property were served by municipal sewer. Finally, the approval of this request, as recommended, is not contrary to the public interest and is in conformance with the purpose and intent of the Ordinance.

OTHER ITEMS REQUIRING BOARD ACTION: NONE

ADJOURNMENT:

Mr. Bartholomew

I make a motion to adjourn this meeting at 8:15 p.m.

The motion was seconded by Mr. Dwyer and carried unanimously.

Respectfully submitted,

Peggy S. Pelikan
Secretary, Board of Adjustment